LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 24 1960
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966
No. 506

DEPARTMENT OF FISH AND GAME OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

FEDERAL POWER COMMISSION; PACIFIC POWER & LIGHT CO.,

Respondents.

Amici Curiae Brief in Support of Petition for Writ of Certiorari.

Submitted Severally by the States of Arizona, Georgia, Idaho, Iowa, Michigan, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington.

[For Counsel, See Inside Cover.]

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

For the State of Arizona
DARRELL F. SMITH
Attorney General
JORDAN GREEN
Assistant Attorney General
159 Capitol Building
Phoenix, Arizona 85007

For the State of Georgia
ARTHUR K. BOLTON
Attorney General
132 State Judicial Building
40 Capitol Square
Atlanta, Georgia 30334
GEORGE J. HEARN III
MARSHALL R. SIMS
Assistant Attorneys General
135 State Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

For the State of Idaho
ALLAN G. SHEPARD
Attorney General
State House
Boise, Idaho 83702
T. J. JONES III
Special Counsel
1611 West Jefferson
Boise, Idaho 83702

For the State of Iowa
LAWRENCE F. SCALISE
Attorney General
ROBERT B. SCISM
Assistant Attorney General
State Capitol
Des Moines, Iowa 50319

For the State of Michigan
FRANK J. KELLEY
Attorney General
ROBERT A. DERENGOSKI
Solicitor General
NICHOLAS V. OLDS
Assistant Attorney General
The Capitol
Lansing, Michigan 48902

For the State of Nevada
HARVEY DICKERSON
Attorney General
Supreme Court Building
Carson City, Nevada 89701
DANIEL J. OLGUIN
Deputy Attorney General
310 South Virginia Street
Reno, Nevada

For the State of North Carolina
T. WADE BRUTON
Attorney General
MILLARD R. RICH, JR.
Assistant Attorney General
P.O. Box 629
Justice Building
Raleigh, N. C. 27602

For the State of Oklahoma
CHARLES NESBITT
Attorney General
JOSEPH C. MUSKRAT
Assistant Attorney General
112 State Capitol
Oklahoma City, Okla. 73105

For the State of Oregon
ROBERT Y. THORNTON
Attorney General
GEORGE S. WOODWORTH
Assistant Attorney General
469 State Office Building
Portland, Oregon 97201

For the Commonwealth of Pennsylvania
EDWARD FRIEDMAN
Attorney General
RICHARD H. KUTZ
Deputy Attorney General
Room 238 State Capitol
Harrisburg, Penna. 17120

For the State of South Dakota
FRANK L. FARRAR
Attorney General
State Capitol
Pierre, South Dakota 57501

For the Commonwealth of Virginia
ROBERT Y. BUTTON
Attorney General
KENNETH C. PATTY
First Asst. Attorney General
Supreme Court Building
Richmond, Virginia 23219

For the State of Washington
JOHN J. O'CONNELL
Attorney General
JOSEPH L. CONIFF
MIKE JOHNSTON
JOHN R. MILLER
Assistant Attorneys General
Temple of Justice
Olympia, Washington 98501

SUBJECT INDEX

	Page
Interest of Amici Curiae	2
Reasons for Granting the Writ	3
Conclusion	3

TABLE OF AUTHORITY CITED

Rules

Revised Rules of United States Supreme Court, Rule 42-4 1

IN THE

Supreme Court of the United States

October Term, 1966

No. 506

DEPARTMENT OF FISH AND GAME OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

FEDERAL POWER COMMISSION; PACIFIC POWER & LIGHT CO.,

Respondents.

Amici Curiae Brief in Support of Petition for Writ of Certiorari.

Submitted Severally by the States of Arizona, Georgia, Idaho, Iowa, Michigan, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, Washington.

Pursuant to rule 42-4 of the Revised Rules of the United States Supreme Court, the above named states, acting severally, do hereby submit this amici curiae brief in support of the petition for writ of certiorari of the Department of Fish and Game of the State of California in this matter.[1]

[1]In addition, the States of Washington and Oregon ask the Court to take judicial notice of their respective amicus curiae briefs in support of the petition for a writ of certiorari in a prior

(This footnote is continued on the next page)

The "citations to opinions below," "questions presented," "jurisdiction," "statute involved," and "statement" are set forth in the petition.

Interest of Amici Curiae.

Each state amicus curiae has rivers flowing within or on its borders, or both. Most of these waters support an important fishery resource, and some support anadromous fish. Most of these watercourses include actual or potential sites for recreational facilities.

On many of these rivers are sites at which the Federal Power Commission may license a hydroelectric power project under the Federal Power Act.

Each state is therefore concerned with the authority of the Commission to require its licensees to bear operation and maintenance costs for recreation and fishery facilities at projects that it may license on any river within or on the borders of the respective states. Each state is equally concerned with the authority of the Commission to permit its licensee to pay for only part of those costs and leave the balance to be borne by the people of the state, if the facilities are to be run at all.

Thus, each state is vitally interested in the basic question presented by the petition.

---

proceeding in this same matter (Department of Fish and Game of the State of California v. FPC, No. 648, October Term 1964). The Washington brief was dated and filed on or about November 20, 1964. The Oregon brief was filed on or about December 1, 1964. These briefs point out more directly the interests and arguments of the two states, respectively.

Reasons for Granting the Writ.

It is important to each state amicus curiae that the basic issue presented by the petition for writ of certiorari be authoritatively resolved by the United States Supreme Court as soon as possible.

Essentially, that issue is whether the Commission's licensee must pay all operation and maintenance costs for recreation and fishery facilities at a power project it licenses — or whether any part of such costs may be in effect assigned to the people of the state.

Each state believes that the decisions of the Commission and the Court of Appeals for the Ninth Circuit erroneously left a portion of those costs to the people of the State of California. For the reasons set forth in the petition, this issue will undoubtedly arise in many states in the future. Therefore, each state requests that the United States Supreme Court grant the petition, so that it can reverse this unfortunate precedent. Otherwise, it may be repeatedly used to raid a state treasury in order to meet the obligations of a company that has been permitted to use a public resource for its own private gain.

Conclusion.

For the foregoing reasons, amici curiae respectfully request that the petition for a writ of certiorari be granted.

Dated: September 23, 1966.

Respectfully submitted,

For the State of Arizona
DARRELL F. SMITH
Attorney General
JORDAN GREEN
Assistant Attorney General
159 Capitol Building
Phoenix, Arizona 85007

For the State of Georgia
ARTHUR K. BOLTON
Attorney General
132 State Judicial Building
40 Capitol Square
Atlanta, Georgia 30334
GEORGE J. HEARN III
MARSHALL R. SIMS
Assistant Attorneys General
135 State Judicial Building
40 Capitol Square
Atlanta, Georgia 30334

For the State of Idaho
ALLAN G. SHEPARD
Attorney General
State House
Boise, Idaho 83702
T. J. JONES III
Special Counsel
1611 West Jefferson
Boise, Idaho 83702

For the State of Iowa
LAWRENCE F. SCALISE
Attorney General
ROBERT B. SCISM
Assistant Attorney General
State Capitol
Des Moines, Iowa 50319

For the State of Michigan
FRANK J. KELLEY
Attorney General
ROBERT A. DERENGOSKI
Solicitor General
NICHOLAS V. OLDS
Assistant Attorney General
The Capitol
Lansing, Michigan 48902

For the State of Nevada
HARVEY DICKERSON
Attorney General
Supreme Court Building
Carson City, Nevada 89701
DANIEL J. OLGUIN
Deputy Attorney General
310 South Virginia Street
Reno, Nevada

For the State of North Carolina
T. WADE BRUTON
Attorney General
MILLARD R. RICH, JR.
Assistant Attorney General
P.O. Box 629
Justice Building
Raleigh, N. C. 27602

For the State of Oklahoma
CHARLES NESBITT
Attorney General
JOSEPH C. MUSKRAT
Assistant Attorney General
112 State Capitol
Oklahoma City, Okla. 73105

For the State of Oregon
ROBERT Y. THORNTON
Attorney General
GEORGE S. WOODWORTH
Assistant Attorney General
469 State Office Building
Portland, Oregon 97201

For the Commonwealth of Pennsylvania
EDWARD FRIEDMAN
Attorney General
RICHARD H. KUTZ
Deputy Attorney General
Room 238 State Capitol
Harrisburg, Penna. 17120

For the State of South Dakota
FRANK L. FARRAR
Attorney General
State Capitol
Pierre, South Dakota 57501

For the Commonwealth of Virginia
ROBERT Y. BUTTON
Attorney General
KENNETH C. PATTY
First Asst. Attorney General
Supreme Court Building
Richmond, Virginia 23219

For the State of Washington
JOHN J. O'CONNELL
Attorney General
JOSEPH L. CONIFF
MIKE JOHNSTON
JOHN R. MILLER
Assistant Attorneys General
Temple of Justice
Olympia, Washington 98501

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 506

DEPARTMENT OF FISH AND GAME OF THE STATE OF CALIFORNIA, PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. F, pp. 92A–102A) is reported at 359 F. 2d 165. An earlier opinion of the court (Pet. App. C, pp. 63A–81A) is reported at 333 F. 2d 689. The Federal Power Commission's original opinion and order (Pet. App. A, pp. 1A–19A), opinion and order on rehearing (Pet. App. B, pp. 35A–61A), order following remand (Pet. App. D, pp. 82A–84A), and order denying rehearing (Pet. App. E, pp. 85A–89A) are reported at 29 F.P.C. 478, 30 F.P.C. 499, 33 F.P.C. 1282, and 34 F.P.C. 552, respectively. The Commission examiner's initial decision (Pet. App. A, pp. 19A–34A) is reported at 29 F.P.C. 487.

282-523—66